

# **Exhibit J-4**

1           962. This claim is brought on behalf of Nationwide Class Members who are  
2 Tennessee residents (the "Tennessee Class").

3           963. New GM concealed and suppressed material facts concerning the  
4 quality of the class vehicles.

5           964. New GM concealed and suppressed material facts concerning the  
6 culture of New GM – a culture characterized by an emphasis on cost-cutting, the  
7 studious avoidance of quality issues, and a shoddy design process.

8           965. New GM concealed and suppressed material facts concerning the  
9 defects in the class vehicles, and that it valued cost-cutting over quality and took  
10 steps to ensure that its employees did not reveal known defects to regulators or  
11 consumers.

12           966. New GM did so in order to boost confidence in its vehicles and falsely  
13 assure purchasers and lessors of its vehicles and Certified Previously Owned vehicle;  
14 that New GM was a reputable manufacturer that stands behind its vehicles after they  
15 are sold and that its vehicles are safe and reliable. The false representations were  
16 material to consumers, both because they concerned the quality and safety of the  
17 class vehicles and because the representations played a significant role in the value o  
18 the vehicles.

19           967. New GM had a duty to disclose the defects in the class vehicles because  
20 they were known and/or accessible only to New GM, were in fact known to New  
21 GM as of the time of its creation in 2009 and at every point thereafter, New GM had  
22 superior knowledge and access to the facts, and New GM knew the facts were not  
23 known to or reasonably discoverable by Plaintiffs and the Tennessee Class. New GM  
24 also had a duty to disclose because it made many general affirmative representations  
25 about the safety, quality, and lack of defects in its vehicles, as set forth above, which  
26 were misleading, deceptive and incomplete without the disclosure of the additional  
27 facts set forth above regarding defects in the class vehicles. Having volunteered to  
28 provide information to Plaintiffs, GM had the duty to disclose not just the partial

KNAPP,  
PETERSEN  
& CLARKE

1 truth, but the entire truth. These omitted and concealed facts were material because  
2 they directly impact the value of the class vehicles purchased or leased by Plaintiffs  
3 and the Tennessee Class.

4 968. New GM actively concealed and/or suppressed these material facts, in  
5 whole or in part, to protect its profits and avoid recalls that would hurt the brand's  
6 image and cost New GM money, and it did so at the expense of Plaintiffs and the  
7 Tennessee Class.

8 969. On information and belief, New GM has still not made full and adequate  
9 disclosure and continues to defraud Plaintiffs and the Tennessee Class and conceal  
10 material information regarding defects that exist in the class vehicles.

11 970. Plaintiffs and the Tennessee Class were unaware of these omitted  
12 material facts and would not have acted as they did if they had known of the  
13 concealed and/or suppressed facts, in that they would not have purchased cars  
14 manufactured by New GM; and/or they would not have purchased cars manufactured  
15 by Old GM in the time after New GM had come into existence and had fraudulently  
16 opted to conceal, and to misrepresent, the true facts about the vehicles; and/or would  
17 not have continued to drive their vehicles or would have taken other affirmative  
18 steps. Plaintiffs' and the Tennessee Class's actions were justified. New GM was in  
19 exclusive control of the material facts and such facts were not known to the public,  
20 Plaintiffs, or the Tennessee Class.

21 971. Because of the concealment and/or suppression of the facts, Plaintiffs  
22 and the Tennessee Class sustained damage because they own vehicles that  
23 diminished in value as a result of New GM's concealment of, and failure to timely  
24 disclose, the defects in the class vehicles and the quality issues engendered by New  
25 GM's corporate policies. Had they been aware of the defects that existed in the class  
26 vehicles, Plaintiffs who purchased new or Certified Previously Owned vehicles after  
27 New GM came into existence either would have paid less for their vehicles or would  
28 not have purchased or leased them at all; and no Plaintiffs regardless of time of

1 purchase or lease would have maintained their vehicles.

2 972. The value of all Tennessee Class Members' vehicles has diminished as  
3 result of New GM's fraudulent concealment of the defects which have tarnished the  
4 Corvette brand and made any reasonable consumer reluctant to purchase any of the  
5 class vehicles, let alone pay what otherwise would have been fair market value for  
6 the vehicles.

7 973. Accordingly, New GM is liable to the Tennessee Class for damages in  
8 an amount to be proven at trial.

9 974. New GM's acts were done maliciously, oppressively, deliberately, with  
10 intent to defraud, and in reckless disregard of Plaintiffs' and the Tennessee Class's  
11 rights and well-being to enrich New GM. New GM's conduct warrants an assessment  
12 of punitive damages in an amount sufficient to deter such conduct in the future,  
13 which amount is to be determined according to proof.

14 **COUNT LXIV**

15 **FRAUD BY CONCEALMENT OF THE RIGHT TO FILE A CLAIM**  
16 **AGAINST OLD GM IN BANKRUPTCY**

17 975. Plaintiffs reallege and incorporate by reference all paragraphs as though  
18 fully set forth herein.

19 976. This claim is brought only on behalf of Class members who are  
20 Tennessee residents and who owned their class vehicle for at least some period of  
21 time between July 11, 2009 and November 30, 2009.

22 977. New GM was aware of the defects in class vehicles sold by Old GM  
23 from the moment it came into existence upon entry of the Sale Order And Sale  
24 Agreement by which New GM acquired substantially all the assets of Old GM.

25 978. The Tennessee Class did not receive notice of the defect in the class  
26 vehicles prior to the entry of the Sale Order. No recall occurred.

27 979. In September of 2009, the bankruptcy court entered the Bar Date Order,  
28 establishing November 30, 2009, as the deadline (the "Bar Date") for proof of claims

1 to be filed against Old GM.

2 980. Because New GM concealed its knowledge of defect in the class  
3 vehicles, the Tennessee Class did not receive notice of the defect in the class vehicle  
4 prior to the passage of the Bar Date. No recall occurred.

5 981. In 2011, the bankruptcy court approved a Chapter 11 Plan under which  
6 the General Unsecured Creditors' Trust ("GUC Trust") would distribute the proceed  
7 of the bankruptcy sale to, among others, the holders of claims that were ultimately  
8 allowed.

9 982. The out-of-pocket consideration provided by New GM for its  
10 acquisition of Old GM consisted of 10% of the post-closing outstanding shares of  
11 New GM common stock and two series of warrants, each to purchase 7.5% of the  
12 post-closing shares of New GM (collectively, the "New GM Securities").

13 983. Through an "accordion feature" in the Sale Agreement, New GM agree  
14 that it would provide additional consideration if the aggregate amount of allowed  
15 general unsecured claims exceeded \$35 billion. In that event, New GM would be  
16 required to issue additional shares of New GM Common Stock for the benefit of the  
17 GUC Trust's beneficiaries.

18 984. As of September 30, 2014, the total amount of Allowed Claims was  
19 approximately \$31.854 billion, and the total amount of Disputed Claims was  
20 approximately \$79.5 million.

21 985. As of September 30, 2014, the GUC Trust had distributed more than  
22 89% of the New GM Securities. After a subsequent November 12 distribution, the  
23 total assets of the GUC Trust were approximately \$773.7 million – all or nearly all o  
24 which is already slated to pay the GUC Trust's expenses and existing beneficiaries o  
25 the Trust.

26 986. But for New GM's fraudulent concealment of the defects, the Tennessee  
27 Class would have filed claims against Old GM before the Bar Date.

28 ////

1 987. Had the Tennessee Class filed timely claims before the Bar Date, the  
2 claims would have been allowed.

3 988. New GM's concealment and suppression of the material fact of the  
4 defect in the class vehicle over the first several months of its existence served to  
5 prevent the filing of claims by the Class.

6 989. New GM had a duty to disclose the defects in the class vehicles because  
7 the information was known and/or accessible only to New GM who had superior  
8 knowledge and access to the facts, and New GM knew the facts were not known to  
9 or reasonably discoverable by Plaintiffs and the Tennessee Class. These omitted and  
10 concealed facts were material because they directly impacted the safety and the value  
11 of the class vehicles purchased or leased by Plaintiffs and the Tennessee Class, who  
12 had a limited period of time in which to file a claim against the manufacturer of the  
13 vehicles, Old GM.

14 990. Plaintiffs and the Tennessee Class were unaware of these omitted  
15 material facts and would not have acted as they did if they had known of the  
16 concealed and/or suppressed facts. Plaintiffs' and the Tennessee Class's actions were  
17 justified. New GM was in exclusive control of the material facts and such facts were  
18 not known to the public, Plaintiffs, or the Tennessee Class.

19 991. Because of the concealment and/or suppression of the facts, Plaintiffs  
20 and the Tennessee Class sustained damage because they lost their chance to file a  
21 claim against Old GM and seek payment from the GUC Trust. Had they been aware  
22 of the defects that existed in their vehicles, Plaintiffs would have timely filed claims  
23 and would have recovered from the GUC Trust.

24 992. Accordingly, New GM is liable to the Tennessee Class members for  
25 their damages in an amount to be proven at trial.

26 993. New GM's acts were done maliciously, oppressively, deliberately, with  
27 intent to defraud, and in reckless disregard of Plaintiffs' and the Tennessee Class's  
28 rights and well-being to enrich New GM. New GM's conduct warrants an assessment

1 of punitive damages in an amount sufficient to deter such conduct in the future,  
2 which amount is to be determined according to proof.

3 **COUNT LXV**

4 **THIRD-PARTY BENEFICIARY CLAIM**

5 994. Plaintiffs reallege and incorporate by reference all paragraphs as though  
6 fully set forth herein.

7 995. This claim is brought only on behalf of Class members who are  
8 Tennessee residents (the "Tennessee Class").

9 996. In the Sales Agreement through which New GM acquired substantially  
10 all of the assets of New GM, New GM explicitly agreed as follows:

11 From and after the Closing, [New GM] shall comply with the  
12 certification, reporting and recall requirements of the National Traffic  
13 and Motor Vehicle and Motor Vehicle Safety Act, the Transportation  
14 Recall Enhancement, Accountability and Documentation Act, the Clean  
15 Air Act, the California Health and Safety Code and similar Laws, in  
16 each case, to the extent applicable in respect of vehicles and vehicle  
17 parts manufactured or distributed by [Old GM].

18 997. With the exception of the portion of the agreement that purports to  
19 immunize New GM from its own independent misconduct with respect to cars and  
20 parts made by Old GM, the Sales Agreement is a valid and binding contract.

21 998. But for New GM's covenant to comply with the TREAD Act with  
22 respect to cars and parts made by Old GM, the TREAD Act would have no  
23 application to New GM with respect to those cars and parts. That is because the  
24 TREAD Act on its face imposes reporting and recall obligations only on the  
25 "manufacturers" of a vehicle. 49 U.S.C. § 30118(c).

26 999. Because New GM agreed to comply with the TREAD Act with respect  
27 to vehicles manufactured by Old GM, New GM agreed to (among other things): (a)  
28 make quarterly submissions to NHTSA of "early warning reporting" data, including

1 incidents involving property damage, warranty claims, consumer complaints, and  
2 field reports concerning failure, malfunction, lack of durability or other performance  
3 issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b) retain for five years all  
4 underlying records on which the early warning reports are based and all records  
5 containing information on malfunctions that may be related to motor vehicle safety.  
6 See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate remedial action if it knows  
7 or should know that a safety defect exists – including notifying NHTSA and  
8 consumers and ordering a recall if necessary. See 49 U.S.C. § 30118(c); 49 C.F.R. §  
9 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

10 1000. Plaintiffs, as owners and lessors of vehicles and parts manufactured by  
11 Old GM, are the clear intended beneficiaries of New GM's agreement to comply  
12 with the TREAD Act. Under the Sale Agreement, Plaintiffs were to receive the  
13 benefit of having a manufacturer responsible for monitoring the safety of their Old  
14 GM vehicles and making certain that any known defects would be promptly  
15 remedied.

16 1001. Although the Sale Order which consummated New GM's purchase of  
17 Old GM purported to give New GM immunity from claims concerning vehicles or  
18 parts made by Old GM, the bankruptcy court recently ruled that provision to be  
19 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale  
20 conduct with respect to cars and parts made by Old GM. Therefore, that provision of  
21 the Sale Order and related provisions of the Sale Agreement cannot be read to bar  
22 Plaintiffs' third-party beneficiary claim as it is based solely on New GM's post-sale  
23 breaches of the promise it made in the Sale Agreement.

24 1002. New GM breached its covenant to comply with the TREAD Act with  
25 respect to the class vehicles, as it failed to take action to remediate the defects at any  
26 time, up to the present.

27 1003. Plaintiffs and the Tennessee Class were damaged as a result of New  
28 GM's breach. Because of New GM's failure to timely remedy the defect in class



1 vehicles, the value of the Old GM class vehicles has diminished in an amount to be  
2 determined at trial.

3 **COUNT LXVI**

4 **UNJUST ENRICHMENT**

5 1004. Plaintiffs reallege and incorporate by reference all paragraphs as though  
6 fully set forth herein.

7 1005. This claim is brought on behalf of members of the Tennessee Class who  
8 purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time period  
9 after New GM came into existence, and who purchased or leased class vehicles in the  
10 time period before New GM came into existence, which cars were still on the road  
11 after New GM came into existence (the "Tennessee Unjust Enrichment Class").

12 1006. New GM has received and retained a benefit from the Plaintiffs and  
13 inequity has resulted.

14 1007. New GM has benefitted from selling and leasing defective cars,  
15 including Certified Pre-Owned cars, whose value was artificially inflated by New  
16 GM's concealment of defect issues that plagued class vehicles, for more than they  
17 were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced to  
18 pay other costs.

19 1008. With respect to the class vehicles purchased before New GM came into  
20 existence that were still on the road after New GM came into existence and as to  
21 which New GM had unjustly and unlawfully determined not to recall, New GM  
22 benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted  
23 from its statements about the success of New GM.

24 1009. Thus, all Tennessee Unjust Enrichment Class Members conferred a  
25 benefit on New GM.

26 1010. It is inequitable for New GM to retain these benefits.

27 1011. Plaintiffs were not aware about the true facts about class vehicles, and  
28 did not benefit from GM's conduct.

1 1012. New GM knowingly accepted the benefits of its unjust conduct.

2 1013. As a result of New GM's conduct, the amount of its unjust enrichment  
3 should be disgorged, in an amount according to proof.

4 Texas

5 COUNT LXVII

6 VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES –

7 CONSUMER PROTECTION ACT

8 (TEX. BUS. & COM. CODE §§ 17.41, et seq.)

9 1014. Plaintiffs reallege and incorporate by reference all paragraphs as though  
10 fully set forth herein.

11 1015. This claim is brought only on behalf of Nationwide Class members who  
12 are Texas residents (the “Texas Class”).

13 1016. Plaintiffs and the Texas Class are individuals, partnerships and  
14 corporations with assets of less than \$25 million (or are controlled by corporations or  
15 entities with less than \$25 million in assets). See TEX. BUS. & COM. CODE §  
16 17.41.

17 1017. The Texas Deceptive Trade Practices-Consumer Protection Act (“Texas  
18 DTPA”) provides a private right of action to a consumer where the consumer suffers  
19 economic damage as the result of either (i) the use of false, misleading or deceptive  
20 act or practice specifically enumerated in TEX. BUS. & COM. CODE § 17.46(b);  
21 (ii) “breach of an express or implied warranty” or (iii) “an unconscionable action or  
22 course of action by any person.” TEX. BUS. & COM. CODE § 17.50(a)(2) & (3).

23 1018. An “unconscionable action or course of action,” means “an act or  
24 practice which, to a consumer’s detriment, takes advantage of the lack of knowledge,  
25 ability, experience, or capacity of the consumer to a grossly unfair degree.” TEX.  
26 BUS. & COM. CODE § 17.45(5). As detailed herein, New GM has engaged in an  
27 unconscionable action or course of action and thereby caused economic damages to  
28 the Texas Class.

1 1019. New GM has also breached the implied warranty of merchantability  
2 with respect to the Texas Class, as set forth in Texas Count III below.

3 1020. New GM has also violated the specifically enumerated provisions of  
4 TEX. BUS. & COM. CODE § 17.46(b) by, at a minimum: (1) representing that the  
5 class vehicles have characteristics, uses, benefits, and qualities which they do not  
6 have; (2) representing that the class vehicles are of a particular standard, quality, and  
7 grade when they are not; (3) advertising the class vehicles with the intent not to sell  
8 them as advertised; (4) failing to disclose information concerning the class vehicles  
9 with the intent to induce consumers to purchase or lease the class vehicles.

10 1021. In the course of its business, New GM systematically devalued safety  
11 and concealed defects in the class vehicles as described herein and otherwise  
12 engaged in activities with a tendency or capacity to deceive. New GM also engaged  
13 in unlawful trade practices by employing deception, deceptive acts or practices,  
14 fraud, misrepresentations, or concealment, suppression or omission of any material  
15 fact with intent that others rely upon such concealment, suppression or omission, in  
16 connection with the sale of the class vehicles.

17 1022. From the date of its inception on July 11, 2009, New GM knew of many  
18 serious defects affecting many models and years of GM-branded vehicles, because o  
19 (i) the knowledge of Old GM personnel who remained at New GM; (ii) continuous  
20 reports, investigations, and notifications from regulatory authorities; and (iii)  
21 ongoing performance of New GM's TREAD Act obligations. New GM became  
22 aware of other serious defects and systemic safety issues years ago, but concealed all  
23 of that information.

24 1023. New GM was also aware that it valued cost-cutting over safety, selected  
25 parts from the cheapest supplier regardless of quality, and actively discouraged  
26 employees from finding and flagging known safety defects, and that this approach  
27 would necessarily cause the existence of more defects in the vehicles it designed and  
28 manufactured and the failure to disclose and remedy defects in all GM-branded

1 vehicles. New GM concealed this information as well.

2 1024. By failing to disclose and by actively concealing the many defects in  
3 GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality,  
4 and by presenting itself as a reputable manufacturer that valued safety and stood  
5 behind its vehicles after they were sold, New GM engaged in deceptive and  
6 unconscionable business practices in violation of the Texas DTPA.

7 1025. In the course of New GM's business, it willfully failed to disclose and  
8 actively concealed the dangerous risk posed by the defects discussed above. New  
9 GM compounded the deception by repeatedly asserting that GM-branded vehicles  
10 were safe, reliable, and of high quality, and by claiming to be a reputable  
11 manufacturer that valued safety and stood behind its vehicles once they are on the  
12 road.

13 1026. New GM's unfair or deceptive acts or practices were likely to and did in  
14 fact deceive reasonable consumers, including Plaintiffs, about the true safety and  
15 reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of  
16 safety at New GM, and the true value of the class vehicles.

17 1027. New GM intentionally and knowingly misrepresented material facts  
18 regarding the class vehicles with the intent to mislead Plaintiffs and the Texas Class.

19 1028. New GM knew or should have known that its conduct violated the  
20 Texas DTPA.

21 1029. As alleged above, New GM made material statements about the safety  
22 and reliability of the class vehicles and the GM brand that were either false or  
23 misleading.

24 1030. New GM owed Plaintiffs a duty to disclose the true safety and reliability  
25 of the class vehicles and the devaluing of safety at New GM, because New GM:

26 (a) Possessed exclusive knowledge that it valued cost-cutting over  
27 safety, selected parts from the cheapest supplier regardless of quality, and actively  
28 discouraged employees from finding and flagging known safety defects, and that thi

1 approach would necessarily cause the existence of more defects in the vehicles it  
2 designed and manufactured;

3 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

4 (c) Made incomplete representations about the safety and reliability  
5 of the class vehicles generally, and the valve guide defects in particular, while  
6 purposefully withholding material facts from Plaintiffs that contradicted these  
7 representations.

8 1031. Because New GM fraudulently concealed the defects in the class  
9 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma  
10 attached to those vehicles by New GM's conduct, they are now worth significantly  
11 less than they otherwise would be.

12 1032. New GM's systemic devaluation of safety and its concealment of the  
13 defects in the class vehicles were material to Plaintiffs and the Texas Class. A  
14 vehicle made by a reputable manufacturer of vehicles is worth more than an  
15 otherwise comparable vehicle made by a disreputable manufacturer of vehicles that  
16 conceals defects rather than promptly remedying them.

17 1033. As the foregoing allegations demonstrate, New GM, by its  
18 misrepresentations and failure to disclose material facts about the safety and quality  
19 of its vehicles, which resulted in the deaths and injuries of hundreds, and  
20 economically injured millions more. New GM thereby engaged in acts or practices  
21 which, to the detriment of Plaintiffs and the Texas Class, took advantage of their lack  
22 of knowledge, ability, experience, and capacity to a grossly unfair degree. In other  
23 words, New GM engaged in unconscionable actions or an unconscionable course of  
24 action as to Plaintiffs and the Texas Class.

25 1034. Plaintiffs and the Texas Class suffered ascertainable loss caused by New  
26 GM's misrepresentations and its concealment of and failure to disclose material  
27 information. Plaintiffs who purchased class vehicles after the date of New GM's  
28 inception either would have paid less for their vehicles or would not have purchased

1 or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result  
2 of New GM's misconduct. Under TEX. BUS. & COM. CODE § 17.50(b)(1),  
3 Plaintiffs are entitled to recover such economic damages.

4 1035. As set forth above and in Texas Count III below, New GM breached of  
5 the implied warranty of merchantability with respect to the Texas Class, and engaged  
6 in that unconscionable actions and unconscionable course of action "knowingly,"  
7 which means it did so with "actual awareness of the fact of the act, practice,  
8 condition, defect or failure constituting the breach of warranty" and with "actual  
9 awareness, at the time of the act or practice complained of, of the falsity, deception  
10 or unfairness of the act or practice giving rise to the consumer's claim...." TEX.  
11 BUS. & COM. CODE § 17.45(9). Accordingly, pursuant to TEX. BUS. COM.  
12 CODE § 17.50(b)(1), Members of the Texas Class are entitled to additional damages  
13 in an amount up to three times the amount of economic damages.

14 1036. Regardless of time of purchase or lease, no Plaintiffs would have  
15 maintained and continued to drive their vehicles. By contractually assuming TREAD  
16 Act responsibilities with respect to Old GM class vehicles, New GM effectively  
17 assumed the role of manufacturer of those vehicles because the TREAD Act on its  
18 face only applies to vehicle manufacturers. 49 U.S.C. § 30118(c). New GM had an  
19 ongoing duty to all GM vehicle owners to refrain from unfair and deceptive acts or  
20 practices under the Texas DTPA. And, in any event, all class vehicle owners  
21 suffered ascertainable loss in the form of the diminished value of their vehicles as a  
22 result of New GM's deceptive and unfair acts and practices that occurred in the  
23 course of New GM's business.

24 1037. Pursuant to TEX. BUS. & COM. CODE § 17.50(a)(1) and (b), Plaintiffs  
25 and the Texas Class seek monetary relief against New GM measured as actual  
26 damages in an amount to be determined at trial, treble damages for New GM's  
27 knowing violations of the Texas DTPA, and any other just and proper relief available  
28 under the Texas DTPA.

KNAPP,  
PETERSEN  
& CLARKE

1 1038. Alternatively, or additionally, pursuant to TEX. BUS. & COM. CODE  
2 17.50(b)(3) & (4), Plaintiffs and the Texas Class and all other Texas Class members  
3 who purchased vehicles from New GM on or after July 11, 2009 are entitled to  
4 disgorgement or to rescission or to any other relief necessary to restore any money or  
5 property that was acquired from them based on violations of the Texas DTPA or  
6 which the Court deems proper.

7 1039. The Texas Plaintiffs and the Texas Class also are also entitled to recover  
8 court costs and reasonable and necessary attorneys' fees under § 17.50(d) of the  
9 Texas DTPA.

10 **COUNT LXVIII**

11 **FRAUD BY CONCEALMENT**

12 1040. Plaintiffs reallege and incorporate by reference all paragraphs as though  
13 fully set forth herein.

14 1041. This claim is brought on behalf of Nationwide Class Members who are  
15 Texas residents (the "Texas Class").

16 1042. New GM concealed and suppressed material facts concerning the  
17 quality of the class vehicles.

18 1043. New GM concealed and suppressed material facts concerning the  
19 culture of New GM – a culture characterized by an emphasis on cost-cutting, the  
20 studious avoidance of quality issues, and a shoddy design process.

21 1044. New GM concealed and suppressed material facts concerning the  
22 defects in the class vehicles, and that it valued cost-cutting over quality and took  
23 steps to ensure that its employees did not reveal known defects to regulators or  
24 consumers.

25 1045. New GM did so in order to boost confidence in its vehicles and falsely  
26 assure purchasers and lessors of its vehicles and Certified Previously Owned vehicles  
27 that New GM was a reputable manufacturer that stands behind its vehicles after they  
28 are sold and that its vehicles are safe and reliable. The false representations were

1 material to consumers, both because they concerned the quality and safety of the  
2 class vehicles and because the representations played a significant role in the value of  
3 the vehicles.

4 1046. New GM had a duty to disclose the defects in the class vehicles because  
5 they were known and/or accessible only to New GM, were in fact known to New  
6 GM as of the time of its creation in 2009 and at every point thereafter, New GM had  
7 superior knowledge and access to the facts, and New GM knew the facts were not  
8 known to or reasonably discoverable by Plaintiffs and the Texas Class. New GM also  
9 had a duty to disclose because it made many general affirmative representations  
10 about the safety, quality, and lack of defects in its vehicles, as set forth above, which  
11 were misleading, deceptive and incomplete without the disclosure of the additional  
12 facts set forth above regarding defects in the class vehicles. Having volunteered to  
13 provide information to Plaintiffs, GM had the duty to disclose not just the partial  
14 truth, but the entire truth. These omitted and concealed facts were material because  
15 they directly impact the value of the class vehicles purchased or leased by Plaintiffs  
16 and the Texas Class.

17 1047. New GM actively concealed and/or suppressed these material facts, in  
18 whole or in part, to protect its profits and avoid recalls that would hurt the brand's  
19 image and cost New GM money, and it did so at the expense of Plaintiffs and the  
20 Texas Class.

21 1048. On information and belief, New GM has still not made full and adequate  
22 disclosure and continues to defraud Plaintiffs and the Texas Class and conceal  
23 material information regarding defects that exist in the class vehicles.

24 1049. Plaintiffs and the Texas Class were unaware of these omitted material  
25 facts and would not have acted as they did if they had known of the concealed and/or  
26 suppressed facts, in that they would not have purchased cars manufactured by New  
27 GM; and/or they would not have purchased cars manufactured by Old GM in the  
28 time after New GM had come into existence and had fraudulently opted to conceal,



1 and to misrepresent, the true facts about the vehicles; and/or would not have  
2 continued to drive their vehicles or would have taken other affirmative steps.  
3 Plaintiffs' and the Texas Class's actions were justified. New GM was in exclusive  
4 control of the material facts and such facts were not known to the public, Plaintiffs,  
5 or the Texas Class.

6 1050. Because of the concealment and/or suppression of the facts, Plaintiffs  
7 and the Texas Class sustained damage because they own vehicles that diminished in  
8 value as a result of New GM's concealment of, and failure to timely disclose, the  
9 defects in the class vehicles and the quality issues engendered by New GM's  
10 corporate policies. Had they been aware of the defects that existed in the class  
11 vehicles, Plaintiffs who purchased new or Certified Previously Owned vehicles after  
12 New GM came into existence either would have paid less for their vehicles or would  
13 not have purchased or leased them at all; and no Plaintiffs regardless of time of  
14 purchase or lease would have maintained their vehicles.

15 1051. The value of all Texas Class Members' vehicles has diminished as a  
16 result of New GM's fraudulent concealment of the defects which have tarnished the  
17 Corvette brand and made any reasonable consumer reluctant to purchase any of the  
18 class vehicles, let alone pay what otherwise would have been fair market value for  
19 the vehicles.

20 1052. Accordingly, New GM is liable to the Texas Class for damages in an  
21 amount to be proven at trial.

22 1053. New GM's acts were done maliciously, oppressively, deliberately, with  
23 intent to defraud, and in reckless disregard of Plaintiffs' and the Texas Class's rights  
24 and well-being to enrich New GM. New GM's conduct warrants an assessment of  
25 punitive damages in an amount sufficient to deter such conduct in the future, which  
26 amount is to be determined according to proof.

27 ///

28 ///

KNAPP,  
PETERSEN  
& CLARKE

**COUNT LXIX**

**BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

**(TEX. BUS. & COM. CODE § 2.314)**

1054. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1055. This claim is brought only on behalf of the Texas Class.

1056. New GM was a merchant with respect to motor vehicles under TEX. BUS. & COM. CODE § 2.104.

1057. Under TEX. BUS. & COM. CODE § 2.314, a warranty that the class vehicles were in merchantable condition was implied by law in the transaction in which Plaintiffs and the Texas Class purchased or leased their class vehicles from New GM on or after July 11, 2009.

1058. New GM impliedly warranted that the vehicles were of good and merchantable quality and fit, and safe for their ordinary intended use – transporting the driver and passengers in reasonable safety during normal operation, and without unduly endangering them or members of the public.

1059. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the class vehicles are inherently defective in that there are defects in the engine that result in premature unusual wear and catastrophic failure.

1060. As a direct and proximate result of New GM's breach of the implied warranty of merchantability, Plaintiffs and the Texas Class have been damaged in an amount to be proven at trial.

**COUNT LXX**

**FRAUD BY CONCEALMENT OF THE RIGHT TO FILE A CLAIM**

**AGAINST OLD GM IN BANKRUPTCY**

1061. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1 1062. This claim is brought only on behalf of the Texas Class and, who owned  
2 their class vehicle for at least some period of time between July 11, 2009 and  
3 November 30, 2009.

4 1063. New GM was aware of the defects in class vehicles sold by Old GM  
5 from the moment it came into existence upon entry of the Sale Order And Sale  
6 Agreement by which New GM acquired substantially all the assets of Old GM.

7 1064. The Texas Class did not receive notice of the defect in the class vehicle.  
8 prior to the entry of the Sale Order. No recall occurred.

9 1065. In September of 2009, the bankruptcy court entered the Bar Date Order,  
10 establishing November 30, 2009, as the deadline (the "Bar Date") for proof of claim:  
11 to be filed against Old GM.

12 1066. Because New GM concealed its knowledge of the defect in class  
13 vehicles, the Texas Class did not receive notice of the defect prior to the passage of  
14 the Bar Date. No recall occurred.

15 1067. In 2011, the bankruptcy court approved a Chapter 11 Plan under which  
16 the General Unsecured Creditors' Trust ("GUC Trust") would distribute the proceed  
17 of the bankruptcy sale to, among others, the holders of claims that were ultimately  
18 allowed.

19 1068. The out-of-pocket consideration provided by New GM for its  
20 acquisition of Old GM consisted of 10% of the post-closing outstanding shares of  
21 New GM common stock and two series of warrants, each to purchase 7.5% of the  
22 post-closing shares of New GM (collectively, the "New GM Securities").

23 1069. Through an "accordion feature" in the Sale Agreement, New GM agreed  
24 that it would provide additional consideration if the aggregate amount of allowed  
25 general unsecured claims exceeded \$35 billion. In that event, New GM would be  
26 required to issue additional shares of New GM Common Stock for the benefit of the  
27 GUC Trust's beneficiaries.

28 ////

1 1070. As of September 30, 2014, the total amount of Allowed Claims was  
2 approximately \$31.854 billion, and the total amount of Disputed Claims was  
3 approximately \$79.5 million.

4 1071. As of September 30, 2014, the GUC Trust had distributed more than  
5 89% of the New GM Securities. After a subsequent November 12 distribution, the  
6 total assets of the GUC Trust were approximately \$773.7 million – all or nearly all o  
7 which is already slated to pay the GUC Trust's expenses and existing beneficiaries o  
8 the Trust.

9 1072. But for New GM's fraudulent concealment of the defects, the Texas  
10 Class would have filed claims against Old GM before the Bar Date.

11 1073. Had the Texas Class filed timely claims before the Bar Date, the claims  
12 would have been allowed.

13 1074. New GM's concealment and suppression of the material fact of the  
14 defect in class vehicles over the first several months of its existence served to preven  
15 the filing of claims by the Texas Class.

16 1075. New GM had a duty to disclose the defect in class vehicles because the  
17 information was known and/or accessible only to New GM who had superior  
18 knowledge and access to the facts, and New GM knew the facts were not known to  
19 or reasonably discoverable by Plaintiffs and the Texas Class. These omitted and  
20 concealed facts were material because they directly impacted the safety and the value  
21 of the class vehicles purchased or leased by Plaintiffs and the Texas Class, who had a  
22 limited period of time in which to file a claim against the manufacturer of the  
23 vehicles, Old GM.

24 1076. Plaintiffs and the Texas Class were unaware of these omitted material  
25 facts and would not have acted as they did if they had known of the concealed and/or  
26 suppressed facts. Plaintiffs' and the Texas Class's actions were justified. New GM  
27 was in exclusive control of the material facts and such facts were not known to the  
28 public, Plaintiffs, or the Texas Class.

KNAPP,  
PETERSEN  
& CLARKE

1 1077. Because of the concealment and/or suppression of the facts, Plaintiffs  
2 and the Texas Class sustained damage because they lost their chance to file a claim  
3 against Old GM and seek payment from the GUC Trust. Had they been aware of the  
4 defects that existed in their vehicles, Plaintiffs would have timely filed claims and  
5 would have recovered from the GUC Trust.

6 1078. Accordingly, New GM is liable to the Texas Class members for their  
7 damages in an amount to be proven at trial.

8 1079. New GM's acts were done maliciously, oppressively, deliberately, with  
9 intent to defraud, and in reckless disregard of Plaintiffs' and the Texas Class's rights  
10 and well-being to enrich New GM. New GM's conduct warrants an assessment of  
11 punitive damages in an amount sufficient to deter such conduct in the future, which  
12 amount is to be determined according to proof.

13 **COUNT LXXI**

14 **THIRD-PARTY BENEFICIARY CLAIM**

15 1080. Plaintiffs reallege and incorporate by reference all paragraphs as though  
16 fully set forth herein.

17 1081. This claim is brought only on behalf of Texas Class.

18 1082. In the Sales Agreement through which New GM acquired substantially  
19 all of the assets of New GM, New GM explicitly agreed as follows:

20 From and after the Closing, [New GM] shall comply with the  
21 certification, reporting and recall requirements of the National Traffic  
22 and Motor Vehicle and Motor Vehicle Safety Act, the Transportation  
23 Recall Enhancement, Accountability and Documentation Act, the Clean  
24 Air Act, the California Health and Safety Code and similar Laws, in  
25 each case, to the extent applicable in respect of vehicles and vehicle  
26 parts manufactured or distributed by [Old GM].

27 1083. With the exception of the portion of the agreement that purports to  
28 immunize New GM from its own independent misconduct with respect to cars and

1 parts made by Old GM, the Sales Agreement is a valid and binding contract.

2 1084. But for New GM's covenant to comply with the TREAD Act with  
3 respect to cars and parts made by Old GM, the TREAD Act would have no  
4 application to New GM with respect to those cars and parts. That is because the  
5 TREAD Act on its face imposes reporting and recall obligations only on the  
6 "manufacturers" of a vehicle. 49 U.S.C. § 30118(c).

7 1085. Because New GM agreed to comply with the TREAD Act with respect  
8 to vehicles manufactured by Old GM, New GM agreed to (among other things): (a)  
9 make quarterly submissions to NHTSA of "early warning reporting" data, including  
10 incidents involving property damage, warranty claims, consumer complaints, and  
11 field reports concerning failure, malfunction, lack of durability or other performance  
12 issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b) retain for five years all  
13 underlying records on which the early warning reports are based and all records  
14 containing information on malfunctions that may be related to motor vehicle safety.  
15 See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate remedial action if it knows  
16 or should know that a safety defect exists – including notifying NHTSA and  
17 consumers and ordering a recall if necessary. See 49 U.S.C. § 30118(c); 49 C.F.R. §  
18 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

19 1086. Plaintiffs, as owners and lessors of vehicles and parts manufactured by  
20 Old GM, are the clear intended beneficiaries of New GM's agreement to comply  
21 with the TREAD Act. Under the Sale Agreement, Plaintiffs were to receive the  
22 benefit of having a manufacturer responsible for monitoring the safety of their Old  
23 GM vehicles and making certain that any known defects would be promptly  
24 remedied.

25 1087. Although the Sale Order which consummated New GM's purchase of  
26 Old GM purported to give New GM immunity from claims concerning vehicles or  
27 parts made by Old GM, the bankruptcy court recently ruled that provision to be  
28 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale

1 conduct with respect to cars and parts made by Old GM. Therefore, that provision of  
2 the Sale Order and related provisions of the Sale Agreement cannot be read to bar  
3 Plaintiffs' third-party beneficiary claim as it is based solely on New GM's post-sale  
4 breaches of the promise it made in the Sale Agreement.

5 1088. New GM breached its covenant to comply with the TREAD Act with  
6 respect to the class vehicles, as it failed to take action to remediate the defects at any  
7 time, up to the present.

8 1089. Plaintiffs and the Texas Class were damaged as a result of New GM's  
9 breach. Because of New GM's failure to timely remedy the defect in the class  
10 vehicles, the value of Old GM class vehicles has diminished in an amount to be  
11 determined at trial.

12 **COUNT LXXII**

13 **UNJUST ENRICHMENT**

14 1090. Plaintiffs reallege and incorporate by reference all paragraphs as though  
15 fully set forth herein.

16 1091. This claim is brought on behalf of members of the Texas Class who  
17 purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time period  
18 after New GM came into existence, and who purchased or leased class vehicles in the  
19 time period before New GM came into existence, which cars were still on the road  
20 after New GM came into existence.

21 1092. New GM has received and retained a benefit from the Plaintiffs and  
22 inequity has resulted.

23 1093. New GM has benefitted from selling and leasing defective cars,  
24 including Certified Pre-Owned cars, whose value was artificially inflated by New  
25 GM's concealment of defect issues that plagued class vehicles, for more than they  
26 were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced to  
27 pay other costs.

28 ////

1 1094. With respect to the class vehicles purchased before New GM came into  
2 existence that were still on the road after New GM came into existence and as to  
3 which New GM had unjustly and unlawfully determined not to recall, New GM  
4 benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted  
5 from its statements about the success of New GM.

6 1095. Thus, Texas Class members conferred a benefit on New GM.

7 1096. It is inequitable for New GM to retain these benefits.

8 1097. Plaintiffs were not aware about the true facts about class vehicles, and  
9 did not benefit from GM's conduct.

10 1098. New GM knowingly accepted the benefits of its unjust conduct.

11 1099. As a result of New GM's conduct, the amount of its unjust enrichment  
12 should be disgorged, in an amount according to proof.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs, individually and on behalf all others similarly  
15 situated, respectfully request that this Court enter a judgment against New GM and in  
16 favor of Plaintiffs and the Class, and grant the following relief:

17 1. Determine that this action may be maintained as a class action and  
18 certify it as such under Rule 23(b)(2) and/or 23(b)(3), or alternatively certify all  
19 issues and claims that are appropriately certified under Rule 23(c)(4); and designate  
20 and appoint Plaintiffs as Class Representatives and Plaintiffs' chosen counsel as  
21 Class Counsel;

22 2. Declare, adjudge, and decree the conduct of New GM as alleged herein  
23 to be unlawful, unfair, and/or deceptive and otherwise in violation of law, enjoin any  
24 such future conduct;

25 3. Award Plaintiffs and Class Members actual, compensatory damages or,  
26 in the alternative, statutory damages, as proven at trial;

27 4. Award Plaintiffs and the Class Members exemplary damages in such  
28 amount as proven;

KNAPP,  
PETERSEN  
& CLARKE



1           5.     Award damages and other remedies, including, but not limited to,  
2     statutory penalties, as allowed by any applicable law, such as the consumer laws of  
3     the various states;

4           6.     Award Plaintiffs and the Class Members their reasonable attorneys'  
5     fees, costs, and pre-judgment and post-judgment interest;

6           7.     Declare, adjudge and decree that Defendant violated 18 U.S.C. §§  
7     1962(c) and (d) by conducting the affairs of the RICO Enterprise through a pattern o  
8     racketeering activity and conspiring to do so;

9           8.     Award Plaintiffs and the nation-wide Class Members treble damages  
10    pursuant to 18 U.S.C. § 1964(c);

11          9.     Award Plaintiffs and Class Members restitution and/or disgorgement of  
12    New GM's ill-gotten gains relating to the conduct described in this Complaint; and

13          10.    Award Plaintiffs and the Class Members such other further and differen  
14    relief as the case may require or as determined to be just, equitable, and proper by  
15    this Court.

16    Dated: October 14, 2015

KNAPP, PETERSEN & CLARKE

17  
18  
19           By: /s/ André E. Jardini

André E. Jardini  
K.L. Myles  
Attorneys for Plaintiffs  
WILLIAM D. PILGRIM, WALTER  
GOETZMAN, JEROME E.  
PEDERSON, MICHAEL  
FERNANDEZ, ROY HALEEN,  
HOWARD KOPEL, ROBERT C.  
MURPHY, MIKE PETERS,  
CHRISTOPHER CONSTANTINE,  
JOHN PARSONS, LYLE  
DUNAHOO, AARON CLARK,  
EDWIN WILLIAM KRAUSE,  
DAVID SHELDON, JARED  
KILEY, JEFF KOŁODZI, MORRIS  
SMITH, ANDRES FREY,  
individuals, on behalf of themselves  
and all others similarly situated

20  
21  
22  
23  
24  
25  
26  
27           KNAPP,  
PETERSEN  
& CLARKE  
28

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury in the above-captioned matter.

Dated: October 14, 2015

KNAPP, PETERSEN & CLARKE

By: /s/ André E. Jardini

André E. Jardini

K.L. Myles

Attorneys for Plaintiffs

WILLIAM D. PILGRIM, WALTER

GOETZMAN, JEROME E.

PEDERSON, MICHAEL

FERNANDEZ, ROY HALEEN,

HOWARD KOPEL, ROBERT C.

MURPHY, MIKE PETERS,

CHRISTOPHER CONSTANTINE,

JOHN PARSONS, LYLE

DUNAHOO, AARON CLARK,

EDWIN WILLIAM KRAUSE,

DAVID SHELDON, JARED

KILEY, JEFF KOŁÓDZI, MORRIS

SMITH, ANDRES FREY,

individuals, on behalf of themselves

and all others similarly situated

KNAPP,  
PETERSEN  
& CLARKE

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

I. (a) PLAINTIFFS (Check box if you are representing yourself ☐)  
WILLIAM D. PILGRIM, (Additional Plaintiffs Listed on Attached Sheet)

DEFENDANTS (Check box if you are representing yourself ☐)  
GENERAL MOTORS COMPANY, LLC

(b) County of Residence of First Listed Plaintiff Yavapai County, Arizona  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.

Andre E. Jardini, Esq.  
KNAPP, PETERSEN & CLARKE  
550 North Brand Boulevard, Suite 1500  
Glendale, CA 91203  
Telephone: (818) 547-5000

Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.

## II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1. U.S. Government Plaintiff  
☐ 2. U.S. Government Defendant  
☒ 3. Federal Question (U.S. Government Not a Party)  
☐ 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only  
(Place an X in one box for plaintiff and one for defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State     | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 7 | <input type="checkbox"/> 7 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 8 | <input type="checkbox"/> 8 |

## IV. ORIGIN (Place an X in one box only.)

- ☒ 1. Original Proceeding  
☐ 2. Removed from State Court  
☐ 3. Remanded from Appellate Court  
☐ 4. Reinstated or Reopened  
☐ 5. Transferred from Another District (Specify) \_\_\_\_\_  
☐ 6. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: ☒ Yes ☐ No

MONEY DEMANDED IN COMPLAINT: \$ \_\_\_\_\_

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
Complaint for defective vehicles.

## VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/Etc. <input type="checkbox"/> 460 Deportation <input checked="" type="checkbox"/> 470 Racketeer Influenced & Corrupt Org. <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.) <input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property <b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions <b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 American with Disabilities-Employment <input type="checkbox"/> 446 American with Disabilities-Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee Conditions of Confinement <b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 625 Drug Related <input type="checkbox"/> Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Rel. Inc. Security Act	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405 (g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405 (g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY:

Case Number:

CV-71 (10/14)

CIVIL COVER SHEET

Page 1 of 3

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

VIII. **VENUE:** Your answers to the questions below will determine the division of the Court to which this case will be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

<b>Question A: Was this case removed from state court?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," skip to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question E, below, and continue from there.	<b>STATE CASE WAS PENDING IN THE COUNTY OF</b> <input type="checkbox"/> Los Angeles, Ventura, Santa Barbara, or San Luis Obispo <input type="checkbox"/> Orange <input type="checkbox"/> Riverside or San Bernardino	<b>INITIAL DIVISION IN CACD IS</b> Western Southern Eastern
<b>QUESTION B: Is the United States, or one of its agencies or employees, a PLAINTIFF in this action?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," skip to Question C. If "yes," answer Question B.1, at right.	<b>B.1. Do 50% or more of the defendants who reside in the district reside in Orange Co.?</b> <i>check one of the boxes to the right</i> →  <b>B.2. Do 50% or more of the defendants who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.)</b> <i>check one of the boxes to the right</i> →	<input type="checkbox"/> YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there. <input checked="" type="checkbox"/> NO. Continue to Question B.2.  <input type="checkbox"/> YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there. <input checked="" type="checkbox"/> NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.
<b>QUESTION C: Is the United States, or one of its agencies or employees, a DEFENDANT in this action?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," skip to Question D. If "yes," answer Question C.1, at right.	<b>C.1. Do 50% or more of the plaintiffs who reside in the district reside in Orange Co.?</b> <i>check one of the boxes to the right</i> →  <b>C.2. Do 50% or more of the plaintiffs who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.)</b> <i>check one of the boxes to the right</i> →	<input type="checkbox"/> YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there. <input checked="" type="checkbox"/> NO. Continue to Question C.2.  <input type="checkbox"/> YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there. <input checked="" type="checkbox"/> NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.
<b>QUESTION D: Location of plaintiffs and defendants?</b>  Indicate the location(s) in which 50% or more of <i>plaintiffs who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.) Indicate the location(s) in which 50% or more of <i>defendants who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<b>A.</b> Orange County  <input type="checkbox"/>  <input type="checkbox"/>	<b>B.</b> Riverside or San Bernardino County  <input type="checkbox"/>  <input type="checkbox"/>
<b>D.1. Is there at least one answer in Column A?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "yes," your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question E, below, and continue from there. If "no," go to question D2 to the right. →	<b>D.2. Is there at least one answer in Column B?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "yes," your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question E, below. If "no," your case will be assigned to the WESTERN DIVISION. Enter "Western" in response to Question E, below. ↓	
<b>QUESTION E: Initial Division?</b> Enter the initial division determined by Question A, B, C, or D above: →	<b>INITIAL DIVISION IN CACD</b> Central District, Western Division	
<b>QUESTION F: Northern Counties?</b> Do 50% or more of plaintiffs or defendants in this district reside in Ventura, Santa Barbara, or San Luis Obispo counties? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

IX(a). IDENTICAL CASES: Has this action been previously filed in this court?

☒ NO ☐ YES

If yes, list case number(s): \_\_\_\_\_

IX(b). RELATED CASES: Is this case related (as defined below) to any civil or criminal case(s) previously filed in this court?

☒ NO ☐ YES

If yes, list case number(s): \_\_\_\_\_

Civil cases are related when they (check all that apply):

- ☐ A. Arise from the same or a closely related transaction, happening, or event;  
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or  
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges.

Note: That cases may involve the same patent, trademark, or copyright is not, in itself, sufficient to deem cases related.

A civil forfeiture case and a criminal case are related when they (check all that apply):

- ☐ A. Arise from the same or a closely related transaction, happening, or event;  
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or  
☐ C. Involve one or more defendants from the criminal case in common and would entail substantial duplication of labor if heard by different judges.

X. SIGNATURE OF ATTORNEY

(OR SELF-REPRESENTED LITIGANT): /s/ Andre E. Jardini

DATE: October 14, 2015

Notice to Counsel/Parties: The submission of this Civil Cover Sheet is required by Local Rule 3-1. This Form CV-71 and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. For more detailed instructions, see separate instruction sheet (CV-071A).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title A, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

Attachment to:

United States District Court, Central District Of California  
CIVIL COVER SHEET

I. (a) Plaintiffs (continued from first page)

WALTER GOETZMAN, JEROME E. PEDERSON, MICHAEL FERNANDEZ,  
ROY HALEEN, HOWARD KOPEL, ROBERT C. MURPHY, MIKE PETERS,  
CHRISTOPHER CONSTANTINE, JOHN PARSONS, LYLE DUNAHOO,  
AARON CLARK, EDWIN WILLIAM KRAUSE, DAVID SHELDON, JARED  
KILEY, JEFF KOLODZI, MORRIS SMITH, ANDRES FREY, individuals, on  
behalf of themselves and all others similarly situated

NAME, ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY(S)  
OR OF PARTY APPEARING IN PRO PER  
Andre E. Jardini  
KNAPP, PETERSEN & CLARKE.  
550 North Brand Boulevard, Suite 1500  
Glendale, CA 91203  
Email: aej@kpclegal.com  
(818) 547-5000

ATTORNEY(S) FOR: Plaintiffs

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

WILLIAM D. PILGRIM, ETC., ET AL.

Plaintiff(s),

v.

GENERAL MOTORS COMPANY LLC

Defendant(s)

CASE NUMBER:  
15-08047

AMENDED CERTIFICATION AND NOTICE  
OF INTERESTED PARTIES  
(Local Rule 7.1-1)

TO: THE COURT AND ALL PARTIES OF RECORD:

The undersigned, counsel of record for Plaintiffs  
or party appearing in pro per, certifies that the following listed party (or parties) may have a pecuniary interest in  
the outcome of this case. These representations are made to enable the Court to evaluate possible disqualification  
or recusal.

(List the names of all such parties and identify their connection and interest. Use additional sheet if necessary.)

PARTY	CONNECTION / INTEREST
WILLIAM D. PILGRIM	Plaintiff
WALTER GOETZMAN,	Plaintiff
JEROME E. PEDERSON	Plaintiff
MICHAEL FERNANDEZ	Plaintiff
ROY HALEEN	Plaintiff
HOWARD KOPEL	Plaintiff
ROBERT C. MURPHY	Plaintiff
MIKE PETERS	Plaintiff
CHRISTOPHER CONSTANTINE	Plaintiff
SEE PAGE 2 FOR ADDITIONAL NAMES	

October 14, 2015  
Date

/s/ Andre E. Jardini  
Signature  
ANDRE E. JARDINI

Attorney of record for (or name of party appearing in pro per):

Page 2

Attachment to:

United States District Court, Central District Of California  
**CERTIFICATION AND NOTICE OF INTERESTED PARTIES**

<u>PARTY</u>	<u>CONNECTION/INTEREST</u>
LYLE DUNAHOO	Plaintiff
AARON CLARK	Plaintiff
EDWIN WILLIAM KRAUSE	Plaintiff
DAVID SHELDON	Plaintiff
JARED KILEY	Plaintiff
JEFF KOLODZI	Plaintiff
MORRIS SMITH	Plaintiff
ANDRES FREY	Plaintiff
GENERAL MOTORS COMPANY LLC.	Defendant



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to:

District Judge John F. Walter  
Magistrate Judge Charles F. Eick

The case number on all documents filed with the Court should read as follows:

2:15-cv-08047 JFW(Ex)

Most district judges in the Central District of California refer all discovery-related motions to the assigned magistrate judge pursuant to General Order No. 05-07. If this case has been assigned to either Judge Manuel L. Real or Judge Robert J. Timlin, discovery-related motions should generally be noticed for hearing before the assigned district judge. Otherwise, discovery-related motions should generally be noticed for hearing before the assigned magistrate judge. Please refer to the assigned judges' Procedures and Schedules, available on the Court's website at [www.cacd.uscourts.gov/judges-requirements](http://www.cacd.uscourts.gov/judges-requirements), for additional information.

Clerk, U.S. District Court

October 14, 2015  
Date

By /s/ Edwin Sambrano  
Deputy Clerk

---

ATTENTION

*The party that filed the case-initiating document in this case (for example, the complaint or the notice of removal) must serve a copy of this Notice on all parties served with the case-initiating document. In addition, if the case-initiating document in this case was electronically filed, the party that filed it must, upon receipt of this Notice, promptly deliver mandatory chambers copies of all previously filed documents to the newly assigned-district judge. See L.R. 5-4.5. A copy of this Notice should be attached to the first page of the mandatory chambers copy of the case-initiating document.*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

WILLIAM D. PILGRIM, et al.

Plaintiff(s)

v.

GENERAL MOTORS COMPANY LLC, et al.

Defendant(s).

CASE NUMBER:

2:15-cv-08047-JFW-E

NOTICE TO PARTIES OF  
COURT-DIRECTED ADR PROGRAM

NOTICE TO PARTIES:

It is the policy of this Court to encourage settlement of civil litigation when such is in the best interest of the parties. The Court favors any reasonable means, including alternative dispute resolution (ADR), to accomplish this goal. *See* Civil L.R. 16-15. Unless exempted by the trial judge, parties in all civil cases must participate in an ADR process before trial. *See* Civil L.R. 16-15.1.

The district judge to whom the above-referenced case has been assigned is participating in an ADR Program that presumptively directs this case to either the Court Mediation Panel or to private mediation. *See* General Order No. 11-10, §5. For more information about the Mediation Panel, visit the Court website, [www.cacd.uscourts.gov](http://www.cacd.uscourts.gov), under "ADR."

Pursuant to Civil L.R. 26-1(c), counsel are directed to furnish and discuss with their clients the attached ADR Notice To Parties *before* the conference of the parties mandated by Fed.R.Civ.P. 26(f). Based upon the consultation with their clients and discussion with opposing counsel, counsel must indicate the following in their Joint 26(f) Report: 1) whether the case is best suited for mediation with a neutral from the Court Mediation Panel or private mediation; and 2) when the mediation should occur. *See* Civil L.R. 26-1(c).

At the initial scheduling conference, counsel should be fully prepared to discuss their preference for referral to the Court Mediation Panel or to private mediation and when the mediation should occur. The Court will enter an Order/Referral to ADR at or around the time of the scheduling conference.

Clerk, U.S. District Court

October 14, 2015  
Date

By /s/ Edwin Sambrano  
Deputy Clerk

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE TO PARTIES: COURT POLICY ON SETTLEMENT  
AND USE OF ALTERNATIVE DISPUTE RESOLUTION (ADR)**

**Counsel are required to furnish and discuss this Notice with their clients.**

Despite the efforts of the courts to achieve a fair, timely and just outcome in all cases, litigation has become an often lengthy and expensive process. For this reason, it is this Court's policy to encourage parties to attempt to settle their disputes, whenever possible, through alternative dispute resolution (ADR).

ADR can reduce both the time it takes to resolve a case and the costs of litigation, which can be substantial. ADR options include mediation, arbitration (binding or non-binding), neutral evaluation (NE), conciliation, mini-trial and fact-finding. ADR can be either Court-directed or privately conducted.

The Court's ADR Program offers mediation through a panel of qualified and impartial attorneys who will encourage the fair, speedy and economic resolution of civil actions. Panel Mediators each have at least ten years of legal experience and are appointed by the Court. They volunteer their preparation time and the first three hours of a mediation session. This is a cost-effective way for parties to explore potential avenues of resolution.

This Court requires that counsel discuss with their clients the ADR options available and instructs them to come prepared to discuss the parties' choice of ADR option (settlement conference before a magistrate judge; Court Mediation Panel; private mediation) at the initial scheduling conference. Counsel are also required to indicate the client's choice of ADR option in advance of that conference. *See* Civil L.R. 26-1(c) and Fed.R.Civ.P. 26(f).

Clients and their counsel should carefully consider the anticipated expense of litigation, the uncertainties as to outcome, the time it will take to get to trial, the time an appeal will take if a decision is appealed, the burdens on a client's time, and the costs and expenses of litigation in relation to the amounts or stakes involved.

With more than 15,000 civil cases filed in the District in 2012, less than 1 percent actually went to trial. Most cases are settled between the parties; voluntarily dismissed; resolved through Court-directed or other forms of ADR; or dismissed by the Court as lacking in merit or for other reasons provided by law.

For more information about the Court's ADR Program, the Mediation Panel, and the profiles of mediators, visit the Court website, [www.cacd.uscourts.gov](http://www.cacd.uscourts.gov), under "ADR."

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 William D. Pilgrim, et al., ) Case No. CV 15-8047-JFW (Ex)  
12 Plaintiff, ) STANDING ORDER  
13 v. )  
14 General Motors Company, )  
15 Defendants. )  
16

17 READ THIS ORDER CAREFULLY. IT CONTROLS THE CASE AND  
18 DIFFERS IN SOME RESPECTS FROM THE LOCAL RULES.

19 This action has been assigned to the calendar of Judge  
20 John F. Walter. Both the Court and counsel bear  
21 responsibility for the progress of litigation in Federal  
22 Court. To secure the just, speedy, and inexpensive  
23 determination of every action, all counsel are ordered to  
24 familiarize themselves with the Federal Rules of Civil  
25 Procedure, the Local Rules of the Central District of  
26 California, the General Orders of the Central District and  
27 the Judge's Procedures and Schedules found on the website  
28 / / /

1 for the United States District Court for the Central District  
2 of California (www.cacd.uscourts.gov).

3 **1. Service of the Complaint:**

4 The plaintiff shall promptly serve the Complaint in  
5 accordance with Fed.R.Civ.P. 4 and shall file the proof(s) of  
6 service pursuant to the Local Rules. The plaintiff is hereby  
7 notified that failure to serve the Complaint within 120 days  
8 as required by Fed.R.Civ.P. 4(m) will result in the dismissal  
9 of the Complaint against the unserved defendant(s).

10 **2. Presence of Lead Counsel:**

11 Lead trial counsel shall attend all proceedings before  
12 this Court, including all scheduling, status, and settlement  
13 conferences. Only ONE attorney for a party may be designated  
14 as lead trial counsel unless otherwise permitted by the  
15 Court.

16 **3. Electronic Filing and Courtesy Copies:**

17 (a) Within ten days of a party's initial appearance, lead  
18 trial counsel shall file a declaration entitled, "Declaration  
19 of Lead Trial Counsel re: Compliance with Local Rules  
20 Governing Electronic Filing" which shall notify the Court  
21 that counsel has registered as an "ECF User." The  
22 declaration shall include counsel's "E-Mail Address of  
23 Record" and shall state whether counsel has consented or  
24 elected not to consent to service and receipt of filed  
25 documents by electronic means.

26 If counsel has not consented to the service and receipt  
27 of filed documents by electronic means, counsel shall  
28 immediately file and serve via U.S. Postal Service on all

1 parties who have appeared in the action a Notice advising all  
2 parties that counsel has elected not to consent to electronic  
3 service of documents in this action.

4 (b) All documents that are required to be filed in an  
5 electronic format pursuant to the Local Rules shall be filed  
6 electronically no later than 4:00 p.m. on the date due unless  
7 otherwise ordered by the Court. Any documents filed  
8 electronically after 4:00 p.m. on the date due will be  
9 considered late and may be stricken by the Court. Any  
10 documents which counsel attempt to file electronically which  
11 are improperly filed will not be accepted by the Court.

12 (c) Counsel are ORDERED to deliver **2 copies** of all  
13 documents filed electronically in this action to Chambers.  
14 For each document filed electronically, one copy shall be  
15 marked "CHAMBERS COPY" and the other copy shall be marked  
16 "COURTESY COPY." The "CHAMBERS COPY" and "COURTESY COPY" are  
17 collectively referred to herein as "Courtesy Copies." The  
18 Courtesy Copies of each electronically filed document must  
19 include on each page the running header created by the ECF  
20 system. In addition, on the first page of each Courtesy  
21 Copy, in the space between lines 1 - 7 to the right of the  
22 center, counsel shall include the date the document was  
23 e-filed and the document number. The Courtesy Copies shall  
24 be delivered to Chambers no later than 10:00 a.m. on the next  
25 business day after the document was electronically filed.  
26 All documents must be stapled or bound by a two prong  
27 fastener, the electronic proof of service must be attached as  
28 the last page of each document, and the exhibits attached to

1 any document must be tabbed. Counsel shall not staple the  
2 "COURTESY COPY" and "CHAMBERS COPY" together. The "COURTESY  
3 COPY" of all documents must be three-hole punched at the left  
4 margin with oversized 13/32" hole size, not the standard  
5 9/32" hole size.

6 (d) For any document that is not required to be filed  
7 electronically, counsel are ORDERED to deliver 1 conformed  
8 copy of the document, which shall be marked "COURTESY COPY,"  
9 to Chambers **at the time of filing.**

10 (e) If the Court has granted an application to file  
11 documents under seal, the Court's Courtesy Copies shall  
12 include a complete version of the documents including any  
13 sealed documents with an appropriate notation identifying  
14 that portion of the document that has been filed under seal.  
15 For example, if the Court orders Ex. A to a Declaration filed  
16 under seal, the Court's Courtesy Copies of the Declaration  
17 should include Ex. A as an attachment with a notation that it  
18 has been filed under seal pursuant to the Court's order.

19 (f) In the unlikely event counsel finds it necessary to  
20 file a Notice of Errata: (1) the Notice of Errata shall  
21 specifically identify each error by page and line number and  
22 set forth the correction; and (2) a corrected version of the  
23 document in its entirety shall be attached to the Notice of  
24 Errata.

25 (g) When a proposed order accompanies an electronic  
26 filing, a WordPerfect or Word copy of the proposed order,  
27 along with a copy of the PDF electronically filed main  
28 document shall be e-mailed to JFW\_Chambers@cacd.uscourts.gov.

1 The subject line of the e-mail shall be in the following  
2 format: court's divisional office, year, case type, case  
3 number, document control number assigned to the main document  
4 at the time of filing, judge's initials and filer (party)  
5 name. Failure to comply with this requirement may result in  
6 the denial or striking of the request or the Court may  
7 withhold ruling on the request until the Court receives the  
8 required documents.

9 **4. Discovery:**

10 (a) All discovery matters have been referred to a United  
11 States Magistrate Judge. (The Magistrate Judge's initials  
12 follow the Judge's initials next to the case number.) All  
13 discovery documents must include the words "DISCOVERY MATTER"  
14 in the caption to ensure proper routing. Counsel are  
15 directed to contact the Magistrate Judge's Courtroom Deputy  
16 to schedule matters for hearing.

17 All decisions of the Magistrate Judge shall be final,  
18 subject to modification by the District Court only where it  
19 is shown that the Magistrate Judge's Order is clearly  
20 erroneous or contrary to law. Any party may file and serve a  
21 motion for review and reconsideration before this Court. The  
22 moving party must file and serve the motion within fourteen  
23 calendar days of service of a written ruling or within  
24 fourteen calendar days of an oral ruling that the Magistrate  
25 Judge states will not be followed by a written ruling. The  
26 motion must specify which portions of the ruling are clearly  
27 erroneous or contrary to law and support the contention with  
28 a memorandum of points and authorities. Counsel shall



1 deliver a courtesy copy of the moving papers and responses to  
2 the Magistrate Judge.

3 (b) Counsel shall begin to actively conduct discovery  
4 before the Fed.R.Civ.P. 26(f) conference because at the  
5 Scheduling Conference the Court will impose tight deadlines  
6 to complete discovery.

7 **5. Motions:**

8 (a) **Time for Filing and Hearing Motions:**

9 Motions shall be filed in accordance with the Local  
10 Rules. This Court hears motions on **Mondays commencing at**  
11 **1:30 p.m.** Once a party has noticed a motion for hearing on a  
12 particular date, the hearing shall not be continued without  
13 leave of Court. No supplemental briefs shall be filed  
14 without leave of Court. Courtesy Copies shall be provided to  
15 the Court in accordance with paragraph 3 of this Order. No  
16 motion shall be noticed for hearing for more than 35 calendar  
17 days after service of the motion unless otherwise ordered by  
18 the Court. Documents not filed in compliance with the  
19 Court's requirements will be stricken and will not be  
20 considered by the Court.

21 (b) **Local Rule 7-3:**

22 Among other things, Local Rule 7-3 requires counsel to  
23 engage in a pre-filing conference "to discuss thoroughly,  
24 *preferably in person*, the substance of the contemplated  
25 motion and any potential resolution." Counsel should discuss  
26 the issues with sufficient detail so that if a motion is  
27 still necessary, the briefing may be directed to those  
28 substantive issues requiring resolution by the Court.

1 Many motions to dismiss or to strike could be avoided if  
2 the parties confer in good faith especially for perceived  
3 defects in a Complaint, Answer, or Counterclaim which could  
4 be corrected by amendment. See, e.g., *Eminence Capital, LLC*  
5 *v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (where a  
6 motion to dismiss is granted, a district court should provide  
7 leave to amend unless it is clear that the Complaint could  
8 not be saved by any amendment). The Ninth Circuit requires  
9 that this policy favoring amendment be applied with "extreme  
10 liberality." *Morongo Band of Mission Indians v. Rose*, 893  
11 F.2d 1074, 1079 (9th Cir. 1990).

12 These principles require counsel for the plaintiff to  
13 carefully evaluate the defendant's contentions as to the  
14 deficiencies in the Complaint, and in most instances, the  
15 moving party should agree to any amendment that would cure a  
16 curable defect. Counsel should, at the very least, resolve  
17 minor procedural or other nonsubstantive matters during the  
18 conference.

19 All 7-3 conferences shall be conducted by lead counsel  
20 and shall take place via a communication method that, at a  
21 minimum, allows all parties to be in realtime communication  
22 (letters and e-mail, for example, do not constitute a proper  
23 7-3 conference). Notwithstanding the exception for  
24 preliminary injunction motions in Local Rule 7-3, counsel  
25 contemplating filing a preliminary injunction motion shall  
26 comply with Local Rule 7-3 and meet and confer at least five  
27 days prior to the filing of such a motion.

28 / / /

1        Within three days of the conference, counsel shall file a  
2 joint statement indicating the date, duration, and  
3 communication method of the conference and the participants  
4 in the conference. In addition, the joint statement shall  
5 detail the issues discussed and resolved during the  
6 conference and the issues remaining. Any motion filed prior  
7 to the filing of the joint statement will be stricken.

8        **(c) Length and Format of Motion Papers:**

9        **Memoranda of Points and Authorities in support of or in**  
10 **opposition to motions shall not exceed 25 pages. Replies**  
11 **shall not exceed 12 pages. Only in rare instances and for**  
12 **good cause shown will the Court grant an application to**  
13 **extend these page limitations. Courtesy Copies of all**  
14 **evidence in support of or in opposition to a motion,**  
15 **including declarations and exhibits to declarations, shall be**  
16 **separated by a tab divider on the bottom of the page. If**  
17 **evidence in support of or in opposition to a motion exceeds**  
18 **twenty pages, the Courtesy Copies of the evidence shall be**  
19 **placed in separately bound volumes and include a Table of**  
20 **Contents. If such evidence exceeds fifty pages, the Court's**  
21 **Courtesy Copies of such evidence shall be placed in a slant**  
22 **D-ring binder with each item of evidence separated by a tab**  
23 **divider on the right side. All documents contained in the**  
24 **binder must be three hole punched with the oversized 13/32"**  
25 **hole size, not the standard 9/32" hole size. The binder**  
26 **shall include a Table of Contents and the spine of the binder**  
27 **shall be labeled with its contents.**

28        / / /

1       Typeface shall comply with the Local Rules. NOTE: If  
2 Times Roman is used, the font size must be no less than 14;  
3 if Courier is used, the font size must be no less than 12.  
4 Footnotes shall be in the same typeface and font size as the  
5 text and shall be used sparingly.

6       Documents which do not conform to the Local Rules and  
7 this Order will not be considered.

8       **(d) Citations to Case Law:**

9       Citations to case law **must** identify not only the case  
10 being cited, but the specific page referenced. In the event  
11 it is necessary to cite to Westlaw or Lexis, the Court  
12 prefers that counsel cite to Westlaw. Hyperlinks to case  
13 citations must be included.

14       **(e) Citations to Other Sources:**

15       Statutory references should identify, with specificity,  
16 which sections and subsections are being referenced (e.g.,  
17 Jurisdiction over this claim for relief may appropriately be  
18 found in 47 U.S.C. § 33, which grants the district courts  
19 jurisdiction over all offenses of the Submarine Cable Act,  
20 whether the infraction occurred within the territorial waters  
21 of the United States or on board a vessel of the United  
22 States outside said waters). Statutory references which do  
23 not specifically indicate the appropriate section and  
24 subsection (e.g., Plaintiffs allege conduct in violation of  
25 the Federal Electronic Communication Privacy Act, 18 U.S.C. §  
26 2511, et seq.) are to be **avoided**. Citations to treatises,  
27 manuals, and other materials should similarly include the  
28 volume and the section referenced.

1           **(f) Proposed Orders:**

2           Each party filing or opposing a motion or seeking the  
3 determination of any matter shall prepare and submit to the  
4 Court a separate Proposed Order in accordance with the Local  
5 Rules. The Proposed Order shall set forth the relief or  
6 action sought and a brief statement of the rationale for the  
7 decision with appropriate citations.

8           **(g) Opposing Papers**

9           Within the deadline prescribed by the Local Rules, a  
10 party opposing a motion shall file: (1) an Opposition; or (2)  
11 a Notice of Non-Opposition. If a party files a Notice of  
12 Non-Opposition to a motion under Federal Rule of Civil  
13 Procedure 12(b), (e), or (f), that party shall state whether  
14 it intends to file an amended complaint in accordance with  
15 Federal Rule of Civil Procedure 15(a)(1).

16           **Failure to timely respond to any motion shall be deemed**  
17 **by the Court as consent to the granting of the motion. See**  
18 **Local Rules.**

19           **(h) Amended Pleadings**

20           In the event the Court grants a motion to dismiss without  
21 prejudice to filing an amended complaint, the plaintiff shall  
22 file an amended complaint within the time period specified by  
23 the Court. If no time period is specified by the Court, the  
24 plaintiff shall file an amended complaint within fourteen  
25 calendar days of the date of the order granting the plaintiff  
26 leave to file an amended complaint. Failure to file an  
27 amended complaint within the time allotted will result in the  
28 dismissal of the action with prejudice.

1 Whenever a plaintiff files an amended pleading, a  
2 redlined version of the amended pleading shall be delivered  
3 to Chambers indicating all additions and deletions to the  
4 prior version of that pleading.

5 In addition to the requirements of the Local Rules, all  
6 motions to amend the pleadings shall: (1) state the effect of  
7 the amendment; (2) be serially numbered to differentiate the  
8 amendment from previous amendments; and (3) state the page,  
9 line number(s), and wording of any proposed change or  
10 addition of material. The parties shall deliver to Chambers  
11 a redlined version of the proposed amended pleading  
12 indicating all additions and/or deletions of material.

13 **6. Ex Parte Applications:**

14 Ex parte applications are solely for extraordinary  
15 relief. See *Mission Power Eng'g Co. v. Continental Cas. Co.*,  
16 883 F. Supp. 488 (C.D. Cal. 1995). Applications that fail to  
17 conform with the Local Rules, including a statement of  
18 opposing counsel's position, will not be considered. In  
19 addition to electronic service, the moving party shall  
20 immediately serve the opposing party by fax or hand service  
21 and shall notify the opposing party that any opposition must  
22 be filed not later than twenty-four hours after the filing of  
23 the ex parte application. If counsel does not intend to  
24 oppose the ex parte application, counsel shall immediately  
25 inform the Courtroom Deputy by e-mail and immediately file a  
26 Notice of Non-Opposition. The Court considers ex parte  
27 applications on the papers and usually does not set the  
28 matters for hearing. Courtesy Copies of all moving,

1 opposition, or non-opposition papers shall be provided to the  
2 Court in accordance with paragraph 3 of this Order. The  
3 Courtroom Deputy will notify counsel of the Court's ruling or  
4 a hearing date and time, if the Court determines a hearing is  
5 necessary.

6 7. Applications or Stipulations to Extend the Time to File  
7 any Required Document or to Continue Any Date:

8 No applications or stipulations extending the time to  
9 file any required document or to continue any date are  
10 effective until and unless the Court approves them.

11 Applications and/or stipulations to extend the time to file  
12 any required document or to continue any hearing, Pre-Trial  
13 date, or the Trial date, must set forth the following:

14 (a) the existing due date or hearing date, as well as  
15 all dates set by the Court, including the discovery cut-off  
16 date, the Pre-Trial Conference date, and the Trial date;

17 (b) the new dates proposed by the parties;

18 (c) specific, concrete reasons supporting good cause for  
19 granting the extension; and

20 (d) whether there have been prior requests for extensions  
21 by any party, and whether those requests were granted or  
22 denied by the Court.

23 All applications and stipulations must be accompanied by  
24 a separate and independent proposed order which must be  
25 submitted to the Court in accordance with the Local Rules.  
26 Failure to submit a separate proposed order may result in the  
27 denial of the application or stipulation or the Court may

28 / / /

1 withhold ruling on the application or stipulation until the  
2 Court receives a separate proposed order.

3 **8. Temporary Restraining Orders and Injunctions:**

4 **(a) Documentation Required:**

5 Parties seeking emergency or provisional relief shall  
6 comply with Fed.R.Civ.P.65 and the Local Rules. An ex parte  
7 application for a temporary restraining order must be  
8 accompanied by: (1) a copy of the complaint; (2) a separate  
9 memorandum of points and authorities in support of the  
10 application; (3) the proposed temporary restraining order and  
11 a proposed order to show cause why a preliminary injunction  
12 should not issue; and (4) such other documents in support of  
13 the application which the party wishes the Court to consider.

14 **(b) Notice of Ex Parte Applications:**

15 Unless relieved by order of the Court for good cause  
16 shown, on or before the day counsel files an ex parte  
17 application for a temporary restraining order, counsel must  
18 personally serve notice and all documents in support of the  
19 ex parte application and a copy of the Court's Standing Order  
20 on opposing counsel or party. Counsel shall also notify the  
21 opposing party that any opposition must be filed no later  
22 than twenty-four hours after the service of the ex parte  
23 application. Counsel shall immediately file a Proof of  
24 Service.

25 If counsel does not intend to oppose the ex parte  
26 application, counsel shall immediately inform the Courtroom  
27 Deputy by e-mail and immediately file a Notice of Non-  
28 Opposition. The Court considers ex parte applications on the



1 papers and usually does not set the matter for hearing.  
2 Courtesy Copies of all moving, opposition, or non-opposition  
3 papers shall be provided to the Court in accordance with  
4 paragraph 3 of this Order. The Courtroom Deputy will notify  
5 counsel of the Court's ruling or a hearing date and time, if  
6 the Court determines a hearing is necessary.

7 **9. Proposed Protective Orders and Filings Under Seal:**

8 Protective orders pertaining to discovery must be  
9 submitted to the assigned Magistrate Judge. Proposed  
10 protective orders should not purport to allow, without  
11 further order of Court, the filing under seal of pleadings or  
12 documents filed in connection with a hearing or trial before  
13 the Court. The existence of a protective order does not  
14 alone justify the filing of pleadings or other documents  
15 under seal, in whole or in part.

16 An application to file documents under seal must meet the  
17 requirements of the Local Rules and shall be limited to three  
18 documents by a party, unless otherwise ordered by the Court.  
19 The application to file documents under seal should not be  
20 filed under seal. There is a strong presumption of the  
21 public's right of access to judicial proceedings and records  
22 in civil cases. In order to overcome the presumption in  
23 favor of access, the movant must demonstrate compelling  
24 reasons (as opposed to good cause) for the sealing if the  
25 sealing is requested in connection with a dispositive motion  
26 or trial, and the relief sought shall be narrowly tailored to  
27 serve the specific interest sought to be protected. *Pintos*  
28 / / /

1 *v. Pacific Creditors Ass'n*, 605 F.3d 665 (9th Cir. 2010),  
2 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th  
3 Cir. 2006), *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d  
4 1122, 1135 (9th Cir. 2003).

5 For each document or other type of information sought to  
6 be filed under seal, the party seeking protection must  
7 articulate compelling reasons supported by specific facts or  
8 legal justification that the document or type of information  
9 should be protected. The facts supporting the application to  
10 file documents under seal must be provided by a declaration.  
11 Documents that are not confidential or privileged in their  
12 entirety will not be filed under seal if the confidential  
13 portions can be redacted and filed separately. The  
14 application to file documents under seal should include an  
15 explanation of why redaction is not feasible.

16 If a party wishes to file a document that has been  
17 designated confidential by another party, the submitting  
18 party must give any designating party five calendar days  
19 notice of intent to file. If the designating party objects,  
20 it should notify the submitting party and file an application  
21 to file documents under seal within two court days.

22 If the parties anticipate requesting the Court to file  
23 more than three documents under seal in connection with any  
24 motion, they shall identify all such documents that will be  
25 required to support and oppose the motion during the Local  
26 Rule 7-3 conference. The parties shall then meet and confer  
27 in order to determine if the documents satisfy the  
28 "compelling need" standard for "sealing" each document.

1 Thereafter, the parties shall file a joint application and  
2 lodge a proposed order to file under seal all such documents  
3 with the required showing as to each document. The joint  
4 application shall be filed promptly so that the Court may  
5 rule on the application before the filing date for the  
6 motion. The parties shall not file any pleadings containing  
7 documents they have requested the Court to file under seal  
8 until the Court acts on the application to file under seal.

9 If an application to file documents under seal is denied  
10 in part or in full, the lodged documents will not be filed.  
11 The Courtroom Deputy will notify the submitting party, and  
12 hold the lodged documents for three court days to allow the  
13 submitting party to retrieve the documents. If the documents  
14 are not retrieved, the Courtroom Deputy will dispose of the  
15 documents.

16 A redacted version for public viewing, omitting only such  
17 portions as the Court has ordered filed under seal shall be  
18 promptly filed by the parties after the Court's Order sealing  
19 the documents. Should counsel fail to file a redacted  
20 version of the documents, the Court will strike any motion  
21 that relies on or relates to the document and/or file the  
22 document in the public record.

23 If the Court grants an application to file documents  
24 under seal, the Court's Courtesy Copies shall include a  
25 complete version of the documents with an appropriate  
26 notation identifying the document or the portion of the  
27 document that has been filed under seal.

28 / / /

1 **10. Cases Removed From State Court:**

2 All documents filed in state court, including documents  
3 attached to the Complaint, Answer(s), and Motion(s), must be  
4 re-filed in this Court as a separate supplement to the Notice  
5 of Removal. The supplement must be in a separately bound  
6 volume and shall include a Table of Contents. If the  
7 defendant has not yet answered or moved, the Answer or  
8 responsive pleading filed in this Court must comply with the  
9 Federal Rules of Civil Procedure and the Local Rules of the  
10 Central District. If before the case was removed a motion  
11 was pending in state court, it must be re-noticed in  
12 accordance with the Local Rules.

13 **11. Actions Transferred From Another District**

14 Counsel shall file, within ten days of transfer, a Joint  
15 Report summarizing the status of the action which shall  
16 include a description of all motions filed in the action and  
17 the transferor court's ruling on the motions. In addition,  
18 counsel shall deliver (but not file) one courtesy copy to  
19 Chambers of each document on the docket of the transferor  
20 court. On the first page of each courtesy copy, in the space  
21 between lines 1 - 7, to the right of the center, counsel  
22 shall include the date the document was filed and the  
23 document number. The courtesy copies shall be placed in a  
24 slant D-ring binder in chronological order with each document  
25 separated by a tab divider on the right side. All documents  
26 contained in the binder must be three hole punched with the  
27 oversized 13/32" hole size, not the standard 9/32" hole size.  
28 The binder shall include a Table of Contents and the spine of

1 each binder shall be labeled with its contents. The courtesy  
2 copies shall be delivered to Chambers within ten days of the  
3 transfer.

4 **12. Status of Fictitiously Named Defendants:**

5 This Court adheres to the following procedures when a  
6 matter is removed to this Court on diversity grounds with  
7 fictitiously named defendants referred to in the Complaint:

8 (a) Plaintiff shall ascertain the identity of and serve  
9 any fictitiously named defendants within 120 days of the date  
10 that the Complaint was filed in State Court.

11 (b) If plaintiff believes (by reason of the necessity for  
12 discovery or otherwise) that fictitiously named defendants  
13 cannot be fully identified within the 120-day period, an ex  
14 parte application requesting permission to extend the period  
15 to effectuate service may be filed with the Court. Such  
16 application shall state the reasons therefore, and will be  
17 granted only upon a showing of good cause. The ex parte  
18 application shall be served upon all appearing parties, and  
19 shall state that appearing parties may respond within seven  
20 calendar days of the filing of the ex parte application.

21 (c) If plaintiff desires to substitute a named defendant  
22 for one of the fictitiously named defendants, plaintiff shall  
23 first seek the consent of counsel for all defendants (and  
24 counsel for the fictitiously named party, if that party has  
25 separate counsel). If consent is withheld or denied,  
26 plaintiff shall file an ex parte application requesting such  
27 amendment, with notice to all appearing parties. Each party  
28 shall have seven calendar days to respond. The ex parte

1 application and any response should comment not only on the  
2 substitution of the named party for a fictitiously named  
3 defendant, but on the question of whether the matter should  
4 thereafter be remanded to the Superior Court if diversity of  
5 citizenship is destroyed by the addition of the new  
6 substituted party.

7 **13. Bankruptcy Appeals:**

8 Counsel shall comply with the Notice Regarding Appeal  
9 From Bankruptcy Court issued at the time the appeal is filed  
10 in the District Court. Counsel are ordered to notify the  
11 Court in a joint report if the Certificate of Readiness has  
12 not been prepared by the Clerk of the Bankruptcy Court and  
13 submitted to the Clerk of the District Court within 90 days  
14 of the date of this Order.

15 The matter is considered submitted upon the filing of the  
16 final brief. No oral argument is held unless ordered by the  
17 Court.

18 **14. Communications with Chambers:**

19 Counsel shall not attempt to contact the Court or its  
20 Chambers staff by telephone or by any other ex parte means,  
21 although counsel may contact the Courtroom Deputy at  
22 shannon\_reilly@cacd.uscourts.gov with appropriate inquiries.  
23 To facilitate communication with the Courtroom Deputy,  
24 counsel should list their facsimile transmission numbers and  
25 e-mail address along with their telephone numbers on all  
26 papers.

27 / / /

28 / / /

1 15. Notice of This Order:

2 Counsel for plaintiff shall immediately serve this Order  
3 on all parties, including any new parties to the action. If  
4 this case came to the Court by noticed removal, defendant  
5 shall serve this Order on all other parties.

6 Caveat: If counsel fail to cooperate in the preparation of  
7 the required Joint Rule 26 Report or fail to file the  
8 required Joint Rule 26 Report, or if counsel fail to appear  
9 at the Scheduling Conference, the Pre-Trial Conference and/or  
10 any other proceeding scheduled by the Court, and such failure  
11 is not otherwise satisfactorily explained to the Court: (a)  
12 the cause shall stand dismissed for failure to prosecute, if  
13 such failure occurs on the part of the plaintiff; (b) default  
14 judgment shall be entered if such failure occurs on the part  
15 of the defendant; or (c) the Court may take such action as it  
16 deems appropriate.

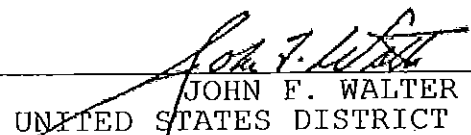
17

18 IT IS SO ORDERED.

19

20 DATED: October 14, 2015

21

  
JOHN F. WALTER  
UNITED STATES DISTRICT JUDGE

22

23

24

25

26

27

28